HONIG v. DOE

Supreme Court of the United States, 1988.

484 U.S. 305

Justice BRENNAN delivered the opinion of the Court.

As a condition of federal financial assistance, the Education of the Handicapped Act requires States to ensure a "free appropriate public education" for all disabled children within their jurisdictions. In aid of this goal, the Act establishes a comprehensive system of procedural safeguards designed to ensure parental participation in decisions concerning the education of their disabled children and to provide administrative and judicial review of any decisions with which those parents disagree. Among these safeguards is the so-called "stay-put" provision, which directs that a disabled child "shall remain in [his or her] then current educational placement" pending completion of any review proceedings, unless the parents and state or local educational agencies otherwise agree. * * * Today we must decide whether, in the face of this statutory proscription, state or local school authorities may nevertheless unilaterally exclude disabled children from the classroom for dangerous or disruptive conduct growing out of their disabilities. In addition, we are called upon to decide whether a district court may, in the exercise of its equitable powers, order a State to provide educational services directly to a disabled child when the local agency fails to do so.

I

In the Education of the Handicapped Act (EHA or the Act) * * * Congress sought "to assure that all handicapped children have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, [and] to assure that the rights of handicapped children and their parents or guardians are protected." * * * When the law was passed in 1975, Congress had before it ample evidence that such legislative assurances were sorely needed: 21 years after this Court declared education to be "perhaps the most important function of state and local governments," * * * Congressional studies revealed that better than half of the Nation's eight million disabled children were not receiving appropriate educational services. * * * Indeed, one out of every eight of these children was excluded from the public school system altogether * * * many others were simply "warehoused" in special classes or were neglectfully shepherded through the system until they were old enough to drop out. * * * Among the most poorly served of disabled students were emotionally disturbed children: Congressional statistics revealed that for the school year immediately preceding passage of the Act, the educational needs of 82 percent of all children with emotional disabilities went unmet. * * *

Although these educational failings resulted in part from funding constraints, Congress recognized that the problem reflected more than a lack of financial resources at the state and local levels. Two federal-court decisions, which the Senate Report characterized as "landmark," * * * demonstrated that many disabled children were excluded pursuant to state statutes or local rules and policies, typically without any consultation with, or even notice to, their parents. * * * Indeed, by

the time of the EHA's enactment, parents had brought legal challenges to similar exclusionary practices in 27 other states. * * *

In responding to these problems, Congress did not content itself with passage of a simple funding statute. Rather, the EHA confers upon disabled students an enforceable substantive right to public education in participating States, see *Board of Education of Hendrick Hudson Central School Dist. V. Rowley*, 458 U.S. 176 * * * (1982),[1] and conditions federal financial assistance upon a State's compliance with the substantive and procedural goals of the Act. Accordingly, States seeking to qualify for federal funds must develop policies assuring all disabled children the "right to a free appropriate public education," and must file with the Secretary of Education formal plans mapping out in detail the programs, procedures and timetables under which they will effectuate these policies. * * * Such plans must assure that, "to the maximum extent appropriate," States will "mainstream" disabled children, i.e., that they will educate them with children who are not disabled, and that they will segregate or otherwise remove such children from the regular classroom setting "only when the nature or severity of the handicap is such that education in regular classes ... cannot be achieved satisfactorily." * * *

The primary vehicle for implementing these congressional goals is the "individualized educational program" (IEP), which the EHA mandates for each disabled child. Prepared at meetings between a representative of the local school district, the child's teacher, the parents or guardians, and, whenever appropriate, the disabled child, the IEP sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives. * * * The IEP must be reviewed and, where necessary, revised at least once a year in order to ensure that local agencies tailor the statutorily required "free appropriate public education" to each child's unique needs.

Envisioning the IEP as the centerpiece of the statute's education delivery system for disabled children, and aware that schools had all too often denied such children appropriate educations without in any way consulting their parents, Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness. * * * Accordingly, the Act establishes various procedural safeguards that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate. These safeguards include the right to examine all relevant records pertaining to the identification, evaluation and educational placement of their child; prior written notice whenever the responsible educational agency proposes (or refuses) to change the child's placement or program; an opportunity to present complaints concerning any aspect of the

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[1] Congress' earlier efforts to ensure that disabled students received adequate public education had failed in part because the measures it adopted were largely hortatory. In the 1966 amendments to the Elementary and Secondary Education Act of 1965, Congress established a grant program "for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects ... for the education of handicapped children." * * * It repealed that program four years later and replaced it with the original version of the Education of the Handicapped Act * * * Part B of which contained a similar grant program. Neither statute, however, provided specific guidance as to how States were to use the funds, nor did they condition the availability of the grants on compliance with any procedural or substantive safeguards. In amending the EHA to its present form, Congress rejected its earlier policy of "merely establish[ing] an unenforceable goal requiring all children to be in school." * * * (remarks of Sen. Schweiker). Today, all 50 states and the District of Columbia receive funding assistance under the EHA. * * *

local agency's provision of a free appropriate public education; and an opportunity for "an impartial due process hearing" with respect to any such complaints. * * *

At the conclusion of any such hearing, both the parents and the local educational agency may seek further administrative review and, where that proves unsatisfactory, may file a civil action in any state or federal court. * * * In addition to reviewing the administrative record, courts are empowered to take additional evidence at the request of either party and to "grant such relief as [they] determine is appropriate." * * * The "stay-put" provision at issue in this case governs the placement of a child while these often lengthy review procedures run their course. It directs that:

> "During the pendency of any proceedings conducted pursuant to [§ 1415], unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child. . . ." * * *

The present dispute grows out of the efforts of certain officials of the San Francisco Unified School District (SFUSD) to expel two emotionally disturbed children from school indefinitely for violent and disruptive conduct related to their disabilities. In November 1980, respondent John Doe assaulted another student at the Louise Lombard School, a developmental center for disabled children. Doe's April 1980 IEP identified him as a socially and physically awkward 17 year old who experienced considerable difficulty controlling his impulses and anger. Among the goals set out in his IEP was "[i]mprovement in [his] ability to relate to [his] peers [and to] cope with frustrating situations without. resorting to aggressive acts." * * * Frustrating situations, however, were an unfortunately prominent feature of Doe's school career: physical abnormalities, speech difficulties, and poor grooming habits had made him the target of teasing and ridicule as early as the first gradev * * * His 1980 IEP reflected his continuing difficulties with peers, noting that his social skills had deteriorated and that he could tolerate only minor frustration before exploding. * * *

On November 6, 1980, Doe responded to the taunts of a fellow student in precisely the explosive manner anticipated by his IEP: he choked the student with sufficient force to leave abrasions on the child's neck, and kicked out a school window while being escorted to the principal's office afterwards. * * * Doe admitted his misconduct and the school subsequently suspended him for five days. Thereafter, his principal referred the matter to the SFUSD Student Placement Committee (SPC or Committee) with the recommendation that Doe be expelled. On the day the suspension was to end, the SPC notified Doe's mother that it was proposing to exclude her child permanently from SFUSD and was therefore extending his suspension until such time as the expulsion proceedings were completed.[2] The Committee further advised her that she was entitled to attend the November 25 hearing at which it planned to discuss the proposed expulsion.

After unsuccessfully protesting these actions by letter, Doe brought this suit against a host of local school officials and the state superintendent of public education. Alleging that the

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[2] California law at the time empowered school principals to suspend students for no more than five consecutive school days, * * * but permitted school districts seeking to expel a suspended student to "extend the suspension until such time as [expulsion proceedings were completed]; provided, that [it] has determined that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process." * * * The State subsequently amended the law to permit school districts to impose longer initial periods of suspension. See n. 3, *infra*.

suspension and proposed expulsion violated the EHA, she sought a temporary restraining order canceling the SPC hearing and requiring school officials to convene an IEP meeting. The District Judge granted the requested injunctive relief and further ordered defendants to provide home tutoring for Doe on an interim basis; shortly thereafter, she issued a preliminary injunction directing defendants to return Doe to his then current educational placement at Louise Lombard School pending completion of the IEP review process. Doe re-entered school on December 15, 5 1/2 weeks, and 24 school days, after his initial suspension.

Respondent Jack Smith was identified as an emotionally disturbed child by the time he entered the second grade in 1976. School records prepared that year indicated that he was unable "to control verbal or physical outburst[s]" and exhibited a "[s]evere disturbance in relationships with peers and adults." * * * Further evaluations subsequently revealed that he had been physically and emotionally abused as an infant and young child and that, despite above average intelligence, he experienced academic and social difficulties as a result of extreme hyperactivity and low self-esteem. * * * Of particular concern was Smith's propensity for verbal hostility; one evaluator noted that the child reacted to stress by "attempt[ing] to cover his feelings of low self worth through aggressive behavior [,] . . . primarily verbal provocations."

Based on these evaluations, SPUSD placed Smith in a learning center for emotionally disturbed children. His grandparents, however, believed that his needs would be better served in the public school setting and, in September 1979, the school district acceded to their requests and enrolled him at A.P. Giannini Middle School. His February 1980 IEP recommended placement in a Learning Disability Group, stressing the need for close supervision and a highly structured environment. * * * Like earlier evaluations, the February 1980 IEP noted that Smith was easily distracted, impulsive, and anxious; it therefore proposed a half-day schedule and suggested that the placement be undertaken on a trial basis. * * *

At the beginning of the next school year, Smith was assigned to a full-day program; almost immediately thereafter he began misbehaving. School officials met twice with his grandparents in October 1980 to discuss returning him to a half-day program; although the grandparents agreed to the reduction, they apparently were never apprised of their right to challenge the decision through EHA procedures. The school officials also warned them that if the child continued his disruptive behavior - which included stealing, extorting money from fellow students, and making sexual comments to female classmates - they would seek to expel him. On November 14, they made good on this threat, suspending Smith for five days after he made further lewd comments. His principal referred the matter to the SPC, which recommended exclusion from SFUSD. As it did in John Doe's case, the Committee scheduled a hearing and extended the suspension indefinitely pending a final disposition in the matter. On November 28, Smith's counsel protested these actions on grounds essentially identical to those raised by Doe, and the SPC agreed to cancel the hearing and to return Smith to a half-day program at A.P. Giannini or to provide home tutoring. Smith's grandparents chose the latter option and the school began home instruction on December 10; on January 6, 1981, an IEP team convened to discuss alternative placements.

After learning of Doe's action, Smith sought and obtained leave to intervene in the suit. The District Court subsequently entered summary judgment in favor of respondents on their EHA claims and issued a permanent injunction. In a series of decisions, the District Judge found that the proposed

expulsions and indefinite suspensions of respondents for conduct attributable to their disabilities deprived them of their congressionally mandated right to a free appropriate public education, as well as their right to have that education provided in accordance with the procedures set out in the EHA. The District Judge therefore permanently enjoined the school district from taking any disciplinary action other than a two- or five-day suspension against any disabled child for disability-related misconduct, or from effecting any other change in the educational placement of any such child without parental consent pending completion of any EHA proceedings. In addition, the judge barred the State from authorizing unilateral placement changes directed it to establish an EHA compliance-monitoring system or, alternatively, to enact guidelines governing local school responses to disability-related misconduct. Finally, the judge ordered the State to provide services directly to disabled children when, in any individual case, the State determined that the local educational agency was unable or unwilling to do so.

On appeal, the Court of Appeals for the Ninth Circuit affirmed the orders with slight modifications. * * * Agreeing with the District Court that an indefinite suspension in aid of expulsion constitutes a prohibited "change in placement" under § 1415(e)(3), the Court of Appeals held that the stay-put provision admitted of no "dangerousness" exception and that the statute therefore rendered invalid those provisions of the California Education Code permitting the indefinite suspension or expulsion of disabled children for misconduct arising out of their disabilities. The court concluded, however, that fixed suspensions of up to 30 school days did not fall within the reach of § 1415(e)(3), and therefore upheld recent amendments to the state education code authorizing such suspensions.[3] Lastly, the court affirmed that portion of the injunction requiring the State to provide services directly to a disabled child when the local educational agency fails to do so.

Petitioner Bill Honig, California Superintendent of Public Instruction,[4] sought review in this Court, claiming that the Court of Appeals' construction of the stay-put provision conflicted with that of several other courts of appeals which had recognized a dangerousness exception * * * and that the direct services ruling placed an intolerable burden on the State. We granted certiorari to resolve these questions * * * and now affirm.

I I

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[Mootness Discussion Omitted.]

III

The language of § 1415(e)(3) is unequivocal. It states plainly that during the pendency of any proceedings initiated under the Act, unless the state or local educational agency and the parents or guardian of a disabled child otherwise agree, "the child *shall* remain in the then current educational placement." § 1415(e)(3) (emphasis added). Faced with this clear directive, petitioner

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3 In 1983, the State amended its Education Code to permit school districts to impose initial suspensions of 20, and in certain circumstances, 30 school days. * * * The legislature did not alter the indefinite suspension authority which the SPC exercised in this case, but simply incorporated the earlier provision into a new section. * * *

4 At the time respondent Doe initiated this suit, Wilson Riles was the California Superintendent of Public Instruction. Petitioner Honig succeeded him in office.

asks us to read a "dangerousness" exception into the stay-put provision on the basis of either of two essentially inconsistent assumptions: first, that Congress thought the residual authority of school officials to exclude dangerous students from the classroom too obvious for comment; or second, that Congress inadvertently failed to provide such authority and this Court must therefore remedy the oversight. Because we cannot accept either premise, we decline petitioner's invitation to re-write the statute.

Petitioner's arguments proceed, he suggests, from a simple, common-sense proposition: Congress could not have intended the stay-put provision to be read literally, for such a construction leads to the clearly unintended, and untenable, result that school districts must return violent or dangerous students to school while the often lengthy EHA proceedings run their course. We think it clear, however, that Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to, exclude disabled students, particularly emotionally disturbed students, from school. In so doing, Congress did not leave school administrators powerless to deal with dangerous students; it did, however, deny school officials their former right to "self-help," and directed that in the future the removal of disabled students could be accomplished only with the permission of the parents or, as a last resort, the courts.

As noted above, Congress passed the EHA after finding that school systems across the country had excluded one out of every eight disabled children from classes. In drafting the law, Congress was largely guided by the recent decisions in *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (1972), and *PARC*, 343 F.Supp. 279 (1972), both of which involved the exclusion of hard-to-handle disabled students. Mills in particular demonstrated the extent to which schools used disciplinary measures to bar children from the classroom. There, school officials had labeled four of the seven minor plaintiffs "behavioral problems," and had excluded them from classes without providing any alternative education to them or any notice to their parents. After finding that this practice was not limited to the named plaintiffs but affected in one way or another an estimated class of 12,000 to 18,000 disabled students * * * the District Court enjoined future exclusions, suspensions, or expulsions "on grounds of discipline." * * *

Congress attacked such exclusionary practices in a variety of ways. It required participating States to educate all disabled children, regardless of the severity of their disabilities * * * and included within the definition of "handicapped" those children with serious emotional disturbances. * * * it further provided for meaningful parental participation in all aspects of a child's educational placement, and barred schools, through the stay-put provision, from changing that placement over the parent's objection until all review proceedings were completed. Recognizing that those proceedings might prove long and tedious, the Act's drafters did not intend § 1415(e)(3) to operate inflexibly * * * (remarks of Sen. Stafford), and they therefore allowed for interim placements where parents and school officials are able to agree on one. Conspicuously absent from § 1415(e)(3), however, is any emergency exception for dangerous students. This absence is all the more telling in light of the injunctive decree issued in *PARC*, which permitted school officials unilaterally to remove students in "extraordinary circumstances.'" * * * Given the lack of any similar exception in *Mills*, and the close attention Congress devoted to these "landmark" decisions * * * we can only conclude that the omission was intentional; we are therefore not at liberty to engraft onto the statute an exception Congress chose not to create.

Our conclusion that § 1415(e)(3) means what it says does not leave educators hamstrung. The Department of Education has observed that, "[w]hile the [child's] placement may not be changed [during any complaint proceeding], this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others." * * * Such procedures may include the use of study carrels, timeouts, detention, or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 school days.[8] This authority, which respondent in no way disputes, not only ensures that school administrators can protect the safety of others by promptly removing the most dangerous of students, it also provides a "cooling down" period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement. And in those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10-day respite gives school officials an opportunity to invoke the aid of the courts under § 1415(e)(2), which empowers courts to grant any appropriate relief.

[Editor's Note: State law, including administrative rules, may impose shorter permissible suspension periods than ten days and such law is probably controlling in such state. *See* footnote 9.]

Petitioner contends, however, that the availability of judicial relief is more illusory than real, because a party seeking review under § 1415(e)(2) must exhaust time-consuming administrative remedies, and because under the Court of Appeals' construction of § 1415(e)(3), courts are as bound by the stay-put provisions "automatic injunction," * * * as are schools.[9] It is true that judicial review is normally not available under § 1415(e)(2) until all administrative proceedings are completed, but as we have previously noted, parents may by-pass the administrative process where exhaustion would be futile or inadequate. * * * (remarks of Sen. Williams) ("[E]xhaustion ... should not be required ... in cases where such exhaustion would be futile either as a legal or practical matter"). While many of the EHA's procedural safeguards protect the rights of parents and children, schools can and do seek redress through the administrative review process, and we have no reason to believe that Congress meant to require schools alone to exhaust in all cases, no matter how exigent the circumstances. The burden in such cases, of course,

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8 The Department of Education has adopted the position first espoused in 1980 by its Office of Civil Rights that a suspension of up to 10 school days does not amount to a "change in placement" prohibited by § 1415(e)(3). * * * The EHA nowhere defines the phrase "change in placement," nor does the statute's structure or legislative history provide any guidance as to how the term applies to fixed suspensions. Given this ambiguity, we defer to the construction adopted by the agency charged with monitoring and enforcing the statute. * * * Moreover, the agency's position comports fully with the purposes of the statute: Congress sought to prevent schools from permanently and unilaterally excluding disabled children by means of indefinite suspensions and expulsions; the power to impose fixed suspensions of short duration does not carry the potential for total exclusion that Congress found so objectionable. Indeed, despite its broad injunction, the District Court in *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (DC 1972), recognized that school officials could suspend disabled children on a short-term, temporary basis. * * * Cf. *Goss v. Lopez*, 419 U.S. 565, 574-576 * * * (1975) (suspension of 10 school days or more works a sufficient deprivation of property and liberty interests to trigger the protections of the Due Process Clause). Because we believe the agency correctly determined that a suspension in excess of 10 days does constitute a prohibited "change in placement," we conclude that the Court of Appeals erred to the extent it approved suspensions of 20 and 30 days' duration.

9 Petitioner also notes that in California, schools may not suspend any given student for more than a total of 20, and in certain special circumstances 30, school days in a single year * * * he argues, therefore, that a school district may not have the option of imposing a 10-day suspension when dealing with an obstreperous child whose previous suspensions for the year total 18 or 19 days. The fact remains, however, that state law does not define the scope of § 1415(e)(3). There may be cases in which a suspension that is otherwise valid under the stay-put provision would violate local law. The effect of such a violation, however, is a question of state law upon which we express no view.

rests with the school to demonstrate the futility or inadequacy of administrative review, but nothing in § 1415(e)(2) suggests that schools are completely barred from attempting to make such a showing. Nor do we think that § 1415(e)(3) operates to limit the equitable powers of district courts such that they cannot, in appropriate cases, temporarily enjoin a dangerous disabled child from attending school. As the EHA's legislative history makes clear, one of the evils Congress sought to remedy was the unilateral exclusion of disabled children by schools, not courts, and one of the purposes of § 1415(e)(3), therefore, was "to prevent *school* officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings." * * * (emphasis added). The stay-put provision in no way purports to limit or pre-empt the authority conferred on courts by § 1415(e)(2) indeed, it says nothing whatever about judicial power.

In short, then, we believe that school officials are entitled to seek injunctive relief under § 1415(e)(2) in appropriate cases. In any such action, § 1415(e)(3) effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others. In the present case, we are satisfied that the District Court, in enjoining the state and local defendants from indefinitely suspending respondent or otherwise unilaterally altering his then current placement, properly balanced respondent's interest in receiving a free appropriate public education in accordance with the procedures and requirements of the EHA against the interests of the state and local school officials in maintaining a safe learning environment for all their students.

IV

We believe the courts below properly construed and applied § 1415(e)(3), except insofar as the Court of Appeals held that a suspension in excess of 10 school days does not constitute a "change in placement." We therefore affirm the Court of Appeals' judgment on this issue as modified herein. Because we are equally divided on the question whether a court may order a State to provide services directly to a disabled child where the local agency has failed to do so, we affirm the Court of Appeals' judgment on this issue as well.

Affirmed.